BEFORE THE
CALIFORNIA UNEMPLOYMENT INSURANCE APPEALS BOARD

In the Matter of the
Reserve Account of:

L. M. BERRY AND COMPANY
(Employer)

PRECEDENT
RULING DECISION
No. P-R-146
Case No. R-72-56

Employer Account No.

Claimant: Paul De Martini
S.S.A. No.:
BYB: 01092 SD: 01052

The employer appealed from Referee's Decision No. S-R-22639 which held the employer not entitled to notices of ruling and determination on the ground that the employer did not respond to the notice of claim filed within the time limit provided by sections 1327 and 1030(a) of the Unemployment Insurance Code and did not show good cause for extending this period.

STATEMENT OF FACTS

The claimant was last employed by the above identified employer and was performing services in the San Bernardino area. These services were supervised and controlled by the employer's west coast office located in Sacramento, California.

The claimant was discharged on January 5, 1972 and on January 7, 1972 reported to the San Bernardino Unemployment Insurance Office to file a claim for benefits. In filing this claim the claimant gave the employer's Sacramento address as the address of the employing unit by which he was last employed.

On January 7, 1972 the San Bernardino Unemployment Insurance Office mailed the notice of claim filed to the Sacramento address. It was received there in the regular course of the mail and remailed to the employer's home office in Dayton, Ohio because it is the policy of this employer that all protests to unemployment insurance

claims shall be made by the Dayton, Ohio office. Under postmark date of January 18, 1972 the Dayton, Ohio office mailed information to the San Bernardino Unemployment Insurance Office relative to the termination of the claimant's employment.

On appeal to this board the employer contends that it has requested notices of claims to be mailed to the Dayton, Ohio office and the delay in responding to this notice of claim "is partly attributable to the actions of the Department."

REASONS FOR DECISION

Section 1327 of the Unemployment Insurance Code reads as follows:

> "A notice of the filing of a new or additional claim shall be given to the employing unit by which the claimant was last employed immediately preceding the filing of such claim, and the employing unit so notified shall submit within 10 days after the mailing of such notice any facts then known which may affect the claimant's eligibility for benefits."

Section 1328 of the code reads as follows:

> "The facts submitted by an employer pursuant to Section 1327 shall be considered and a determination made as to the claimant's eligibility for benefits. The claimant and any employer who prior to the determination has submitted any facts or given any notice pursuant to Section 1327 and authorized regulations shall be promptly notified of the determination and the reasons therefor and may appeal therefrom to a referee within 10 days from mailing or personal service of notice of the determination. The 10-day period may be extended for good cause. The director shall be an interested party to all appeals."

Section 1030(a) of the code reads as follows:

> "Any employer who is entitled under Section 1327 to receive notice of the filing of a new or additional claim may, within 10 days after mailing of such notice, submit to the department any facts within its possession disclosing whether the claimant left such employer's employ voluntarily and without good cause or was discharged from such employment for misconduct connected with his work, or whether the claimant was a student employed on a temporary basis and whose employment began within, and ended with his leaving to return to school at the close of, his vacation period. The period during which the employer may submit such facts may be extended by the director for good cause."

Regulations adopted by the Director of Employment to implement the above cited sections of the Unemployment Insurance Code are found at section 1327-1, Title 22, California Administrative Code. This section reads as follows:

> "(a) An employing unit by which a claimant was last employed immediately preceding the filing of a new or additional claim and who is given notice of the filing of such claim as prescribed by Section 1327 of the code shall, within 10 days after the mailing of such notice as prescribed by Section 1327 of the code, submit to the department at the local office in which the claim was filed any facts then known which may affect the claimant's eligibility for benefits.
>
> "(b) The last employing unit of a claimant shall also submit facts as required by Section 1333-1 of these regulations.
>
> "(c) The submission by the last employing unit of facts to the department under this section shall comply with Section 1333-2 of these regulations.
>
> "(d) The 10-day period prescribed by Section 1327 of the code within which the last employing unit shall submit facts may be extended in accordance with Section 1333-3 of these regulations."

There is nothing contained in the foregoing sections of the code or regulations to justify the conclusion that it is incumbent on the Department to establish in its local offices the procedure necessary for the mailing of the notice of filing of a new or additional claim to any particular office of an employing unit. As a matter of fact, such procedure would be administratively impossible to establish because the initial processing of claims for benefits and the mailing of notices of such claims is decentralized to the various offices of the Department located throughout the state. Of necessity, the local offices must mail notices of new or additional claims to the employing unit at the address given by the claimant. So long as such address is an established place of business of that employer and is staffed with personnel capable of handling, including forwarding, such document, "notice" is accomplished by receipt of such claim by that location. If an employer follows a policy, such as this employer follows, to respond to notices of claims from a central location, it is incumbent on the employer to set up a procedure so that notices may be responded to within the time limit provided by law.

In the instant case the claimant was last employed by an established branch of the employer which admittedly received the notice of claim filed. The branch was manned by supervisorial personnel. We believe that this constitutes proper notice to the employer. The failure of the employer's local facility to forward this notice to its central office in time to respond within the period provided by law can only be presumed to stem from the inter-office procedure established by the employer in transmitting such notices and cannot be attributed to any action by the Department.

The employer was late in responding to the notice of claim filed and has not established good cause for extending the period in which to submit information. We therefore conclude, as did the referee, that the employer is not entitled to notices of ruling and determination.

DECISION

The decision of the referee is affirmed. The employer is not entitled to notices of ruling and determination.

Sacramento, California, August 22, 1972

CALIFORNIA UNEMPLOYMENT INSURANCE APPEALS BOARD

ROBERT W. SIGG, Chairman

CLAUDE MINARD

JOHN B. WEISS - Concurring
(Written Opinion Attached)

DISSENTING IN PART - Separate Opinion Attached

DON BLEWETT

CARL A. BRITSCHGI

CONCURRING OPINION

I fully join my associates in the majority opinion, believing that nothing less can provide for procedural due process. As Justice Stewart, writing for the majority in Fuentes v. Shevin, 92 S. Ct. 1983 (1972), stated:

> "For more than a century the central meaning of procedural due process has been clear: 'Parties whose rights are to be affected are entitled to be heard; and in order that they may enjoy that right they must be notified'. . . . It is equally fundamental that the right to notice and an opportunity to be heard 'must be granted at a meaningful time and in a meaningful manner.'"

Unless the employer can reasonably receive "notice," the rights that follow from it are meaningless. Here the employer had an established place of business staffed with capable personnel. He had "notice." That his internal procedures thereafter failed him must be his own responsibility. Fundamental procedural due process has been met.

JOHN B. WEISS

SEPARATE OPINION

We agree that this employer is not entitled to a notice of ruling or a notice of determination because the employer did not reply to the notice of claim filed within the statutory period and failed to establish good cause for extending the period in which to submit information to the Department. However, we do not agree with the following language contained in this decision:

> ". . . So long as such address is an established place of business of that employer and is staffed with personnel capable of handling, including forwarding, such document, 'notice' is accomplished by receipt of such claim by that location. . . ."

This statement is nothing more than dicta which provides a loophole to those employers who find it inconvenient to conform to the law as it is written. In addition this language is so vague as to be susceptible to any interpretation which at the moment might be convenient.

Although the legislature may not have anticipated a situation where an employer maintains many branch offices or stores, but has all of its bookkeeping activities in a centralized location, the legislature did anticipate that under certain conditions an employer would be unable to submit facts to the Department within 10 days following the mailing of the notice of claim filed. For this reason the law permits an employer to receive a notice of determination and/or notice of ruling even if the employer was late in responding to the notice of claim filed if the employer can establish good cause for extending the period. We believe that the law as it is now written is sufficient and we should not by dicta in our decision attempt to change the law. By applying the law as it is written procedural due process follows.

When an employer is late in submitting a response to a notice of claim filed we should be concerned with the question of whether good cause exists for extending the period in which to reply and not concern ourselves with whether the establishment to which the claim notice

was directed was "staffed with personnel capable of handling . . . such documents" (whatever this may mean). Attention also is directed to section 1013 of the Code of Civil Procedure which reads in part as follows:

> "In case of service by mail, the notice or other paper must be deposited in the United States post office . . . in a sealed envelope, with postage paid, addressed to the person on whom it is to be served . . . . The service is complete at the time of the deposit . . . ."

We believe that employers should be required to follow the law and if employers cannot respond within the statutory period they must be required to show good cause for extending that period.

DON BLEWETT

CARL A. BRITSCHGI